

Decision 02-11-055 November 21, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Establish an
Appropriate Error Rate for Connections Made by
an Automatic Dialing Device Pursuant to
Section 2875.5 of the Public Utilities Code.

Rulemaking 02-02-020
(Filed February 21, 2002)

SECOND INTERIM OPINION

1. Summary

On its own motion, the Commission in this interim decision extends from January 1, 2003, to April 1, 2003, the effective date for changes in the acceptable error rate and other rules applicable to calls generated by predictive dialing telephone equipment. This three-month extension will give us additional time to consider comments by the parties following an industry workshop conducted by our Telecommunications Division.

2. Discussion

As required by Assembly Bill (AB) 870 (Ch. 696, Stats. 2001) and Pub. Util. Code § 2875.5, the Commission on June 27, 2002, established rules aimed at curbing the number of automated telemarketing calls in which the called party is subjected either to "dead air" or a disconnect.

As directed by AB 870, the Commission adopted definitions of "error" and "acceptable error rate" and established an acceptable error rate of 3% for calls generated by predictive dialing telephone equipment. An "error" is defined as a call answered by a live person in which (1) the predictive dialer disconnects the

call after the called party has answered, or (2) the called party does not receive a response from the calling agent or telemarketer within two seconds of the called party's completed greeting, or, alternatively, no agent or telemarketer is available within four seconds of the called party's telephone going off-hook.

In its interim order (Decision (D.) 02-06-072), the Commission directed that the four-second off-hook standard would be phased out by January 1, 2003, and the acceptable error rate on that date would be reduced to 1%.

The Commission also directed its Telecommunications Division to conduct an industry workshop within 90 days to take additional comments on the 1% rate and to consider record-keeping requirements for those using predictive dialer equipment. The workshop also sought suggestions on how best to inform consumers about ways to protect themselves from unwanted telephone calls.

The workshop was conducted on September 26, 2002. Following publication of a workshop report, parties were to file comments on the report and its recommendations.

Our intention was to issue a final decision in this proceeding before the end of the year. However, because of the number of comments that we are receiving, and the need to circulate a proposed final decision for further comments, we now believe that additional time is required before we issue final rules. Accordingly, on our own motion, we extend to April 1, 2003, the time for phasing out the four-second off-hook standard, reducing the acceptable error rate from 3% to 1%, and implementing other changes in the rules governing these types of calls. We expect to have a final decision in place well before the April 1 date.

3. Comments on Draft Decision

The draft decision in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments supporting the draft decision were filed by WorldCom, Inc., and by AT&T Communications of California, Inc.

4. Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.02-06-072, the Commission adopted a definition of “error” and “acceptable error rate” for calls generated by predictive dialing telephone equipment, and established an acceptable error rate of 3%.

2. The acceptable error rate was to be reduced to 1% on January 1, 2003, following further analysis of this and other matters at an industry workshop conducted by the Telecommunications Division.

3. The Telecommunications Division workshop was conducted on September 26, 2002, and was followed by a workshop report and recommendations, and by comments by parties.

4. Because of the number of comments received, the Commission on its own motion proposes to extend the effective date for changes in the acceptable error rate from January 1, 2003, to April 1, 2003.

Conclusion of Law

The effective date for changes in the acceptable error rate for calls generated by predictive dialing telephone equipment, as well as other changes in the rules applicable to such calls, should be extended from January 1, 2003, to April 1, 2003.

O R D E R

IT IS ORDERED that the effective date established by Decision 02-06-072 for changes in the acceptable error rate for calls generated by predictive dialing telephone equipment, as well as other changes in the rules applicable to such calls, is extended from January 1, 2003, to April 1, 2003.

This order is effective today.

Dated November 21, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
MICHAEL R. PEEVEY
Commissioners

Commissioner Geoffrey F. Brown, being necessarily
Absent, did not participate.